UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Stephen J. Axtell
Thompson Hine & Flory, LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, OH 45401-8801

Dear Mr. Axtell:

This letter responds to your April 11, 2001 letter requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, you are asking for guidance about contaminant removal that constitutes recycling. Your letter cites Q&A 588 from the 1998 EPCRA Section 313 Questions and Answers document (EPA 745-B-98-004, December 1998):

> **If a covered facility sends metal scraps containing chromium off-site to be remelted and subsequently reused, does it report the amount of toxic chemical in the metal as recycled off-site?**
>
> **Assuming no contaminants are removed during the melting process, the chromium in the metal scraps is not actually being recovered but merely melted and reused. Therefore, the amount of the toxic chemical in the metal scraps would not be reportable in Part II, Sections 6.2 or 8 of the Form R. However, because the facility is repackaging and distributing the toxic chemicals in commerce, it should consider these amounts of the toxic chemical towards the facility's processing threshold. If the covered facility exceeds a chemical activity threshold, it is required to file a TRI Report for that chemical.**

Based on this Q&A you want to know how the Agency expects facilities to apply the phrase "assuming no contaminants are removed during the melting process" to a variety of typical scrap metal recycling scenarios. According to your letter, some of your client's scrap metal transferees report that some minimal amount of either the metal in question or associated materials attached to the scrap may come to rest in the transferee's baghouse or other air pollution control equipment upon melting. Therefore, they are reluctant to certify that "no contaminants are removed during the melting process." Your letter further asserts that any melting process is

likely to result "in the escape to the atmosphere of at least a few molecules of a given metal and/or attached materials." Accordingly, you are requesting specific guidance about contaminant removal. Further, you want to know if the mixing of more than one type of scrap metal, by either the facility or the facility transferee, prior to melting, affects the recycling analysis. Finally, you would like guidance on the degree of documentation facilities need in order to demonstrate whether a toxic chemical is being recycled or directly reused. According to your letter, the determination as to whether the scrap metal is being recycled or directly reused impacts whether your client is allowed to submit a Form A certification.

Pursuant to the Pollution Prevention Act (PPA) of 1990, facilities must report the quantities of toxic chemicals released, treated for destruction, combusted for energy recovery and recycled. As you know, EPA has not yet promulgated regulations defining these waste management activities. However, it is important to note that releases from an operation do not automatically preclude the consideration of whether a material is being directly reused. EPA considers toxic chemicals "recycled" when the toxic chemicals are recovered for reuse. If toxic chemicals are directly reused, without any intervening reclamation or recovery steps, the toxic chemicals are not considered recycled for Form R reporting purposes. Reclamation or recovery would not include simple phase changing of the toxic chemical before further reuse (*e.g.*, simple remelting of scrap metal). A reclamation and recovery step, however, would include changing the relative amounts of the chemicals in an alloy. A recovery step would include removing toxic chemicals from a pollution control device or removing contaminants from the toxic chemical after it has been used and can no longer be used for its intended purpose. Accordingly, if the scrap metal is not mixed with other scrap and can be remelted and directly reused, without any recovery steps, then the toxic chemicals in the scrap metal are being directly reused. Facilities should use their best readily available information in determining if the scrap sent off-site is being directly reused or instead is recycled because of an intervening reclamation or recovery step prior to reuse. For documentation requirements, you should refer to 40 CFR section 372.10, which addresses the EPCRA section 313 recordkeeping requirements.

I hope this information is helpful to you in understanding the reporting requirements of section 313 of EPCRA. If you have any other questions, or desire further information, please call Larry Reisman, of my staff, at 202.260.2301.

Sincerely,

John M. Dombrowski

John M. Dombrowski, P.E., Chief
TRI Regulation Development Branch